

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0122P

**Withholding Tax
For the Calendar Year 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of the annual WH-3 withholding tax return and accompanying WH-18 statements for the calendar year 2004. The taxpayer is an Indiana company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer has a quality compliance record with regard to other tax filings, and, this is the first time the taxpayer has been required to file a non-resident withholding return.

The Department points out the taxpayer is basically arguing a quality compliance record. The Department will waive penalty in the event of an unusual error and a good compliance record.

In the instant case, the taxpayer misconstrued the filing date. The Department considers this error to be a common error and not the type of error that would qualify for penalty abatement.

With regard to the compliance record, the taxpayer has had numerous errors in the past. The taxpayer's compliance record is not a quality compliance record, and therefore, is a compliance record that would not be a positive factor in the abatement of penalty.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's

carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.